

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>DUSTIN HOBBS,</p> <p style="text-align:right">Complainant,</p> <p style="text-align:center">v.</p> <p>IES UTILITIES INC., n/k/a INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="text-align:right">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-01-2</p>
--	---

ORDER ADDRESSING FORMAL COMPLAINT

(Issued May 17, 2002)

PROCEDURAL HISTORY

On September 4, 2001, Dustin Hobbs filed with the Utilities Board (Board) an informal complaint against IES Utilities Inc., n/k/a Interstate Power and Light Company (IES), concerning the transfer of an unpaid balance for gas and electric service at 1010 S. 4th Street in Burlington, Iowa, from the account of Michael and Heidi Spiker to Mr. Hobbs' account at 404 S. Main in Danville, Iowa. The Board gave IES written notice of the informal complaint. IES filed a response stating that both Mr. Hobbs and Heidi Spiker had lived at the 1010 S. 4th Street address and benefited from the service and were therefore liable for the past due amount. IES stated that since the service at 1010 S. 4th Street was both gas and electric and the

service at 404 S. Main was only gas, only the gas portion of the past due bill would be applied to the 404 S. Main account.

In accordance with 199 IAC 6.4, Board staff notified Mr. Hobbs by letter dated October 31, 2001, that IES's response was being accepted as a proposed resolution of the informal complaint and that Mr. Hobbs had 14 days to file a request for formal complaint if he was not satisfied with the resolution. On November 14, 2001, Mr. Hobbs filed a request for formal complaint proceedings. On November 27, 2001, Mr. Hobbs filed a motion for a formal hearing alleging that the practice of adding former customers' past due bills to current customer or prospective customer accounts, based upon the benefit the current customer received, is a widespread practice and the Board should address the issue after a full evidentiary hearing.

On December 18, 2001, the Board issued an order that opened a formal complaint docket and established a procedural schedule for the parties to file prefiled testimony and scheduled an evidentiary hearing.

There were no applications to intervene filed in the case. IES filed the testimony of Kathy J. Harriott, Customer Satisfaction Program Manager. Mr. Hobbs filed the testimony of himself, his mother Paula Hobbs, and Heidi Spiker. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a "Statement and Exhibit In Lieu of Testimony."

This matter was heard as scheduled on February 26, 2002. All witnesses who filed prefiled testimony appeared and were subject to cross-examination at the hearing. Briefs were filed by Consumer Advocate, Mr. Hobbs, and IES. The Board

issued an order on April 5, 2002, allowing parties the opportunity to file reply briefs. Only Mr. Hobbs filed a reply brief. After reviewing the evidence and briefs in this case, the Board has determined that it must address the legal issues raised by Gas Tariffs 7.08 and 8.02 before addressing the evidence presented. The Board's analysis and decisions are set out below.

LEGAL ISSUES CONCERNING IES TARIFFS

Legal issues concerning IES tariffs were raised by Mr. Hobbs and Consumer Advocate. The Board has considered the issues raised and has concluded it is necessary to address the provisions of Gas Tariffs 7.08 and 8.02 before considering the evidence. Based upon its consideration, the Board has concluded that the two tariffs are overbroad and not consistent with Board rules or contract law or common law. Specifically, the Board concludes that IES improperly transferred the past due gas bill of Ms. Spiker to Mr. Hobbs' account at 404 S. Main and improperly attempted to hold Mr. Hobbs liable for gas service at 1010 S. 4th Street for the period March 1, 2001, to June 5, 2001.

GAS TARIFF 7.08

IES has attempted to hold Mr. Hobbs responsible for a portion of the past due gas bill from 1010 S. 4th Street under the provisions of Gas Tariff 7.08. The provisions of Gas Tariff 7.08 raise legal issues because they give IES the discretion with regard to residential accounts to hold spouses, partners, and all adults living at the premises jointly and severally liable for payment of bills. The Board has

addressed similar legal issues in proposed tariff language in Midwest Gas, a division of Midwest Power Systems, Inc., Docket No. RPU-94-3. The Midwest Gas proposed tariff stated that, "Spouses and partners are jointly and severally liable for payment of bills and in the case of a residential customer, all adults living at the place are jointly and severally liable for payment of bills." The only significant difference between IES Gas Tariff 7.08 and the Midwest Gas proposed tariff is the permissive nature of Gas Tariff 7.08.

The Board held with regard to the Midwest Gas proposed tariff that

The language in the tariff proposed by Midwest Gas is too broad. There are many situations where a court would likely find no liability for payment of a utility bill, even though payment would be required under a literal reading of the tariff. For example, if an adult friend or relative visits a residence for a month, one could argue that person is living at the place but, that person probably should not be liable for the bill. Or should a child, upon assuming his or her 18th birthday, automatically become liable for the gas bills of the house?

(Final Decision and Order at 18 (May 19, 1993).

The Board went on to hold that the portion of the proposed tariff that would allow Midwest Gas to hold spouses and partners jointly and severally liable may be contrary to Iowa law. The Board discussed the provisions of Iowa Code §§ 597.14 and 597.17 in reaching its conclusion.

Iowa Code § 597.14 makes the reasonable and necessary expenses of the family chargeable upon the property of both husband and wife, who may be sued jointly and severally. The Board found that although utility expenses would probably

be considered to be necessary, "there are specific fact situations in which a husband and wife could contract separately for utility service that would not be classified as a family living expense." The Board then pointed out that the provisions of Iowa Code § 597.17 provide that neither a husband nor a wife is liable for the debts or liabilities that the other incurred before marriage and except as provided by statute, they are not liable for the debts of each other contracted after marriage. The Board found that the Midwest Gas tariff might be contrary to this section of the statutes. Both statutory provisions are still valid.

The permissive nature of the IES tariff does not render it any more acceptable than the one rejected by the Board in Docket No. RPU-94-3. The Board finds that the provisions in Gas Tariff 7.08 can be applied to persons who would not be liable for gas service under Board rules or contract or common law. Board rules allow a utility to refuse or disconnect service to a customer for nonpayment.

199 IAC 19.4(15)"h." A customer is defined in subrule 19.1(3) as "any person, firm, association, or corporation, any agency of the federal, state or local government, or legal entity responsible by law for payment for the gas service or heat from the gas utility."

The tariff goes beyond the definition of customer and the limitation of paragraph 19.4(15)"h" and allows refusal or disconnection for the nonpayment by any adult that was living at the residence. There are too many situations where an adult may be "living at," residing at a residence and not be the customer or a person

legally liable for payment for gas service. Based upon this conclusion, the Board will direct IES to file a revised tariff consistent with this decision.

GAS TARIFF 8.02

Although IES ultimately attempted to hold Mr. Hobbs liable for a portion of the gas bill at 1010 S. 4th Street under Gas Tariff 7.08, it initially transferred the past due bill of Ms. Spiker to Mr. Hobbs' account under the provisions of Gas Tariff 8.02. The tariff provides:

Company shall not be required to commence supplying gas service to a Customer if, at the time of application, such Customer, or any member of that household who has received previous gas service, is indebted to Company for that same class of gas service previously supplied at Customer's premises or any other premises, until payment of such indebtedness shall have been made or a reasonable payment agreement has been offered.

Gas Tariff 8.02 suffers from the same defects as Gas Tariff 7.08 and is not consistent with the Board's rules, contract, or common law. The provisions of 8.02 are overly broad and could apply to many situations where neither state law nor common law would hold a person liable. This tariff could effectively prevent a person owing a gas bill from living anywhere in IES' territory without first paying the past due bill. This grants IES too much authority to interfere in many domestic situations and is contrary to public policy. Preventing a person from finding a place to live until they pay IES effectively places IES in charge of the person's life.

Not only does the tariff prevent the person with the past due bill from finding a place to live in IES's territory, it also prevents a person who doesn't owe a past due

bill from finding a place to live if the person with the past due bill is a member of the same household. Under this tariff, a parent could be prevented from allowing an adult child to live at home if the child had a past due bill. The tariff effectively allows IES to hold the customer hostage and limits the customer's right to choose with whom the customer lives.

The "Customer Contact History" from 404 S. Main shows how IES applies this provision. Mr. Hobbs, if he had not sought legal advice, would have either had to pay Ms. Spiker's past due bill, had his service disconnected, or been forced to remove Ms. Spiker from his residence. This is too much authority for a public utility to have.

The Board in Docket No. DRU-02-1 held that MidAmerican Energy Company could not deny a customer service because the landlord of the residence had a past due bill. The Board found the tariff language that attached the debt to the premises went beyond denying service because of the debt of a previous occupant, which is prohibited by 199 IAC 19.4(15) and (16), and denied service for a debt of a person that was not even a previous occupant. Paragraph 199 IAC 4(15)"h" allows refusal or disconnection where the customer has an outstanding debt and subrule 19.4(16) states that the debt of a previous occupant is insufficient reason to refuse or disconnect service.

Under the provisions of Gas Tariff 8.02, IES could deny service to a person because of the past due bill of another person incurred at another location. As in Docket No. DRU-02-1, these tariff provisions are not consistent with and go beyond the intent of the Board's rules.

Based upon the above analysis, the Board will direct IES to file a proposed revised tariff for Gas Tariff 8.02. The proposed revised tariff should be consistent with the decision in this docket.

The Board is aware that there may be legitimate situations where a person is an occupant at a residence and not the customer of record and where that person should be held liable for gas service. Tariffs to address this situation must be narrowly drawn to address those specific situations.

FACTUAL ISSUES

Even though the Board has found that provisions of Gas Tariff 7.08 under which IES was attempting to hold Mr. Hobbs liable for gas service at 1010 S. 4th Street are not consistent with Board rules, the Board will address the evidence presented in this docket. The tariff, as discussed above, purportedly provides IES the authority to hold spouses, partners, and all adults living at the premises jointly and severally liable for payment of bills at a residence.

The operative term in the tariff is "living at." This term is not defined in the dictionary but the definition of the term "reside" includes "living in or at." "Reside," an intransitive verb, is defined to mean to dwell a long time; have one's residence; live in or at. Webster's New World Dictionary, p. 1209 (2d ed. 1978). Using this definition of reside for the term "living at" in the tariff requires that IES show that Mr. Hobbs had his residence at 1010 S. 4th Street during all or part of the period that is covered by the past due bill.

The evidence shows that Ms. Spiker moved into the residence at 1010 S. 4th Street in Burlington, Iowa, in October 2000 and service was started in her name and that of her husband Michael Spiker. Ms. Spiker's name was the only name on the lease for the residence. There is no dispute that Ms. Spiker did not know Mr. Hobbs at the time she moved into 1010 S. 4th Street and there is some evidence that someone else was living with Ms. Spiker at that address prior to her relationship with Mr. Hobbs. From November 9, 2000, to June 8, 2001, the customers of record at 1010 S. 4th Street were Michael and Heidi Spiker. (Tr. 66, l. 20-21)

Mr. Hobbs admits that he had a relationship with Ms. Spiker beginning in March of 2001. He admits visiting 1010 S. 4th Street at least once or twice a week, but that he never stayed more than one night at a time and he never left any of his personal belongings at the residence. Mr. Hobbs testified that he resided during this period at the home of his mother Paula Hobbs (Mrs. Hobbs).

Ms. Spiker and Mrs. Hobbs testified in support of Mr. Hobbs. Both witnesses support Mr. Hobbs testimony that he only stayed overnight at 1010 S. 4th Street once or twice a week and that he kept his belongings at Mrs. Hobbs residence. The Board finds that the testimony of these witnesses is credible and supports a finding that Mr. Hobbs did not reside at 1010 S. 4th Street from March 1, 2001, to June 5, 2001.

The evidence presented by IES in support of its position is not sufficient to counterbalance the testimony of Mr. Hobbs, Ms. Spiker, and Mrs. Hobbs. The evidence presented by IES consists mainly of the business records contained in the

customer contact histories while Ms. Spiker was the customer at 1010 S. 4th Street. The first mention of Mr. Hobbs in this contact history is from June 5, 2001, when Mr. Hobbs is mentioned in a note from a conversation with the landlord.

The next mention of Mr. Hobbs is when he called IES to schedule a carbon monoxide test. According to the note in the contact history, Mr. Hobbs was told he could not schedule the carbon monoxide test since he was not the customer.

The last relevant note in the contact history is from December 13, 2001. In this note IES is asking the landlord if he knows when Mr. Hobbs moved into 1010 S. 4th Street. The note states that the landlord did not know the exact date but guessed it was sometime around March 1. The landlord's statement is double hearsay, has little probative value, and was taken six months after Ms. Spiker moved out of the residence. This is several months after IES had transferred the past due gas bill to Mr. Hobbs' account at 404 S. Main in Danville, Iowa.

IES presented evidence that Mr. Hobbs accepted service of Ms. Spiker's eviction notice at 1010 S. 4th Street. Mr. Hobbs testified he accepted service since Ms. Spiker was asleep in the house at the time. There is no dispute that Mr. Hobbs was present at the residence on many occasions, and the Board finds that acceptance of service is not sufficient evidence to find that he resided at the location for purposes of becoming liable for gas service.

IES cites to failure of Mr. Hobbs to tell any IES representative that he lived with his mother and not at 1010 S. 4th Street until the prefilled testimony. Although a failure to act or make a statement may be taken under certain circumstances to be

an admission, in this case the surrounding circumstances do not support such a finding. In this instance, there is no indication Mr. Hobbs was ever asked where he was living if not at 1010 S. 4th Street. IES seems to have taken the word of the landlord without making additional inquiries.

The Board finds that the testimony of Mr. Hobbs, Ms. Spiker, and Mrs. Hobbs was sufficiently credible to outweigh the evidence presented by IES. The evidence presented by IES was isolated incidents and the double hearsay statement of the landlord. Iowa Code § 17A.14 states, "A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial." The Board finds that a reasonable person would not rely on the less than exact and potentially biased hearsay statements of the landlord or the isolated incidents in reaching a decision on this issue.

The evidence presented in this case is not sufficient to find that Mr. Hobbs "lived at" or resided at 1010 S. 4th Street at any time from March 1, 2001, to June 5, 2001, for purposes of finding him liable for payment of the past due gas bills from that location.

FINDINGS OF FACT

1. Dustin Hobbs did not "live at" or reside at 1010 S. 4th Street, Burlington, Iowa, from March 1, 2001, to June 5, 2001.
2. Dustin Hobbs is not liable for gas service at 1010 S. 4th Street, Burlington, Iowa, for the period March 1, 2001, to June 5, 2001.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and the subject matter of this proceeding pursuant to Iowa Code chapter 476 (2001).
2. The provisions of IES Gas Tariff 7.08 violate the provisions of 199 IAC 19.4(15).
3. The provisions of IES Gas Tariff 8.02 violate the provisions of 199 IAC 19.4(15) and (16).

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. IES Utilities Inc., n/k/a Interstate Power and Light Company, shall file revised Gas Tariffs 7.08 and 8.02 to comply with this order on or before June 30, 2002.
2. Dustin Hobbs is not liable for gas service at 1010 S. 4th Street in Burlington, Iowa, for the period March 1, 2001, to June 5, 2001.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 17th day of May, 2002.